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GOVERNMENT OF TRIPURA
LAW DEPARTMENT
SECRETARIAT : AGARTALA

No.F.11(2)-Law/Lib/2018/9156 Dated, Agartala, the 17th September, 2019.

Subject : Re-publication of Central Acts & Amendment Acts in the State Gazette.

1. The Companies (Amendment) Act 2019 (Act No. 22 of 2019)

17/09/19

Rahul Roy
ALC & Under Secretary, Law,
Government of Tripura.

THE COMPANIES (AMENDMENT) ACT, 2019

AN

ACT

further to amend the Companies Act, 2013.

BE it enacted by Parliament in the Seventieth Year of the Republic of India as follows:—

Short title and commencement.

1. (*1*) This Act may be called the Companies (Amendment) Act, 2019.

(*2*) The provisions of this Act, except sections 6, 7 and 8, clauses (*i*), (*iii*) and clause (*iv*) of section 14, sections 20 and 21, section 31, sections 33, 34,and 35, sections 37 and 38 shall be deemed to have come into force on the 2nd day of November, 2018.

(*3*) The provisions of sections 6, 7 and 8, clauses (*i*), (*iii*) and clause (*iv*) of section 14, sections 20 and 21, section 31, sections 33, 34 and 35, sections 37 and 38 shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint

and different dates may be appointed for these provisions and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

Amendment of section 2.

2. In section 2 of the Companies Act, 2013 (hereinafter referred to as the principal Act), in clause (*41*),— 18 of 2013.

(*a*) for the first proviso, the following provisos shall be substituted, namely:—

"Provided that where a company or body corporate, which is a holding company or a subsidiary or associate company of a company incorporated outside India and is required to follow a different financial year for consolidation of its accounts outside India, the Central Government may, on an application made by that company or body corporate in such form and manner as may be prescribed, allow any period as its financial year, whether or not that period is a year:

Provided further that any application pending before the Tribunal as on the date of commencement of the Companies (Amendment) Act, 2019, shall be disposed of by the Tribunal in accordance with the provisions applicable to it before such commencement.";

(*b*) in the second proviso, for the words "Provided further that", the words "Provided also that" shall be substituted.

Insertion of new section 10A.

3. After section 10 of the principal Act, the following section shall be inserted, namely:—

Commencement of business, etc.

"10A. (*1*) A company incorporated after the commencement of the Companies (Amendment) Act, 2019 and having a share capital shall not commence any business or exercise any borrowing powers unless—

(*a*) a declaration is filed by a director within a period of one hundred and eighty days of the date of incorporation of the company in such form and verified in such manner as may be prescribed, with the Registrar that every subscriber to the memorandum has paid the value of the shares agreed to be taken by him on the date of making of such declaration; and

(*b*) the company has filed with the Registrar a verification of its registered office as provided in sub-section (*2*) of section 12.

(*2*) If any default is made in complying with the requirements of this section, the company shall be liable to a penalty of fifty thousand rupees and every officer who is in default shall be liable to a penalty of one thousand rupees for each day during which such default continues but not exceeding an amount of one lakh rupees.

(*3*) Where no declaration has been filed with the Registrar under clause (*a*) of sub-section (*1*) within a period of one hundred and eighty days of the date of incorporation of the company and the Registrar has reasonable cause to believe that the company is not carrying on any business or operations, he may, without prejudice to the provisions of sub-section (*2*), initiate action for the removal of the name of the company from the register of companies under Chapter XVIII.".

Amendment of section 12.

4. In section 12 of the principal Act, after sub-section (*8*), the following sub-section shall be inserted, namely:—

"(*9*) If the Registrar has reasonable cause to believe that the company is not carrying on any business or operations, he may cause a physical verification of the registered office of the company in such manner as may be prescribed and if any default is found to be made in complying with the requirements of sub-section (*1*), he may without prejudice to the provisions of sub-section (*8*), initiate action for the removal of the name of the company from the register of companies under Chapter XVIII.".

Amendment of section 14.

5. In section 14 of the principal Act,—

(*i*) in sub-section (*1*), for the second proviso, the following provisos shall be substituted, namely:—

"Provided further that any alteration having the effect of conversion of a public company into a private company shall not be valid unless it is approved by an order of the Central Government on an application made in such form and manner as may be prescribed:

Provided also that any application pending before the Tribunal, as on the date of commencement of the Companies (Amendment) Act, 2019, shall be disposed of by the Tribunal in accordance with the provisions applicable to it before such commencement.";

(*ii*) in sub-section (*2*), for the word "Tribunal", the words "Central Government" shall be substituted.

Amendment of section 26.

6. In section 26 of the principal Act,—

(*i*) in sub-sections (*4*), (*5*) and (*6*), for the word "registration", the word "filing" shall be substituted;

(*ii*) sub-section (*7*) shall be omitted.

Amendment of section 29.

7. In section 29 of the principal Act,—

(*i*) in sub-section (*1*), in clause (*b*), the word "public" shall be omitted;

(*ii*) after sub-section (*1*), the following sub-section shall be inserted, namely:—

"(*1A*) In case of such class or classes of unlisted companies as may be prescribed, the securities shall be held or transferred only in dematerialised form in the manner laid down in the Depositories Act, 1996 and the regulations made thereunder.".

22 of 1996.

Amendment of section 35.

8. In section 35 of the principal Act, in sub-section (*2*), in clause (*c*), for the words "delivery of a copy of the prospectus for registration", the words "filing of a copy of the prospectus with the Registrar" shall be substituted.

Amendment of section 53.

9. In section 53 of the principal Act, for sub-section (*3*), the following sub-section shall be substituted, namely:—

"(*3*) Where any company fails to comply with the provisions of this section, such company and every officer who is in default shall be liable to a penalty which may extend to an amount equal to the amount raised through the issue of shares at a discount or five lakh rupees, whichever is less, and the company shall also be liable to refund all monies received with interest at the rate of twelve per cent. per annum from the date of issue of such shares to the persons to whom such shares have been issued.".

Amendment of section 64.

10. In section 64 of the principal Act, for sub-section (*2*), the following sub-section shall be substituted, namely:—

"(*2*) Where any company fails to comply with the provisions of sub-section (*1*), such company and every officer who is in default shall be liable to a penalty of one thousand rupees for each day during which such default continues, or five lakh rupees whichever is less.".

Amendment of section 77.

11. In section 77 of the principal Act, in sub-section (*1*), for the first and second provisos, the following provisos shall be substituted, namely:—

"Provided that the Registrar may, on an application by the company, allow such registration to be made—

(*a*) in case of charges created before the commencement of the Companies (Amendment) Act, 2019, within a period of three hundred days of such creation; or

(*b*) in case of charges created on or after the commencement of the Companies (Amendment) Act, 2019, within a period of sixty days of such creation,

on payment of such additional fees as may be prescribed:

Provided further that if the registration is not made within the period specified—

(*a*) in clause (*a*) to the first proviso, the registration of the charge shall be made within six months from the date of commencement of the Companies (Amendment) Act, 2019, on payment of such additional fees as may be prescribed and different fees may be prescribed for different classes of companies;

(*b*) in clause (*b*) to the first proviso, the Registrar may, on an application, allow such registration to be made within a further period of sixty days after payment of such *ad valorem* fees as may be prescribed.".

Amendment of section 86.

12. Section 86 of the principal Act shall be numbered as sub-section (*1*) thereof and after sub-section (*1*) as so numbered, the following sub-section shall be inserted, namely:—

"(*2*) If any person wilfully furnishes any false or incorrect information or knowingly suppresses any material information, required to be registered in accordance with the provisions of section 77, he shall be liable for action under section 447.".

Substitution of new section for section 87.

13. For section 87 of the principal Act, the following section shall be substituted, namely:—

Rectification by Central Government in Register of charges.

"87. The Central Government on being satisfied that—

(*a*) the omission to give intimation to the Registrar of the payment or satisfaction of a charge, within the time required under this Chapter; or

(*b*) the omission or misstatement of any particulars, in any filing previously made to the Registrar with respect to any charge or modification thereof or with respect to any memorandum of satisfaction or other entry made in pursuance of section 82 or section 83,

was accidental or due to inadvertence or some other sufficient cause or it is not of a nature to prejudice the position of creditors or shareholders of the company, it may, on the application of the company or any person interested and on such terms and conditions as it deems just and expedient, direct that the time for the giving of intimation of payment or satisfaction shall be extended or, as the case may require, that the omission or misstatement shall be rectified.".

Amendment of section 90.

14. In section 90 of the principal Act,—

(*i*) after sub-section (*4*), the following sub-section shall be inserted, namely:—

"(*4A*) Every company shall take necessary steps to identify an individual who is a significant beneficial owner in relation to the company and require him to comply with the provisions of this section.";

(*ii*) for sub-section (*9*), the following sub-section shall be substituted, namely:—

"(*9*) The company or the person aggrieved by the order of the Tribunal may make an application to the Tribunal for relaxation or lifting of the restrictions placed under sub-section (*8*), within a period of one year from the date of such order:

Provided that if no such application has been filed within a period of one year from the date of the order under sub-section (*8*), such shares shall be

Amendment of section 132.

20. In section 132 of the principal Act,—

(*a*) after sub-section (*1*), the following sub-section shall be inserted, namely:—

"(*1A*) The National Financial Reporting Authority shall perform its functions through such divisions as may be prescribed.";

(*b*) after sub-section (*3*), the following sub-sections shall be inserted, namely:—

"(*3A*) Each division of the National Financial Reporting Authority shall be presided over by the Chairperson or a full-time Member authorised by the Chairperson.

(*3B*) There shall be an executive body of the National Financial Reporting Authority consisting of the Chairperson and full-time Members of such Authority for efficient discharge of its functions under sub-section (*2*) [other than clause (*a*)] and sub-section (*4*).";

(*c*) in sub-section (*4*), in clause (*c*), for sub-clause (*B*), the following sub-clause shall be substituted, namely:—

"(*B*) debarring the member or the firm from—

I. being appointed as an auditor or internal auditor or undertaking any audit in respect of financial statements or internal audit of the functions and activities of any company or body corporate; or

II. performing any valuation as provided under section 247,

for a minimum period of six months or such higher period not exceeding ten years as may be determined by the National Financial Reporting Authority.".

Amendment of section 135.

21. In section 135 of the principal Act,—

(*a*) in sub-section (*5*),—

(*i*) after the words "three immediately preceding financial years,", the words "or where the company has not completed the period of three financial years since its incorporation, during such immediately preceding financial years," shall be inserted;

(*ii*) in the second proviso, after the words "reasons for not spending the amount" occurring at the end, the words, brackets, figure and letters "and, unless the unspent amount relates to any ongoing project referred to in sub-section (*6*), transfer such unspent amount to a Fund specified in Schedule VII, within a period of six months of the expiry of the financial year" shall be inserted;

(*b*) after sub-section (*5*), the following sub-sections shall be inserted, namely:—

"(*6*) Any amount remaining unspent under sub-section (*5*), pursuant to any ongoing project, fulfilling such conditions as may be prescribed, undertaken by a company in persuance of its Corporate Social Responsibility Policy, shall be transferred by the company within a period of thirty days from the end of the financial year to a special account to be opened by the company in that behalf for that financial year in any scheduled bank to be called the Unspent Corporate Social Responsibility Account, and such amount shall be spent by the company in pursuance of its obligation towards the Corporate Social Responsibility Policy within a period of three financial years from the date of such transfer, failing which, the company shall transfer the same to a Fund specified in Schedule VII, within a period of thirty days from the date of completion of the third financial year.

(*7*) If a company contravenes the provisions of sub-section (*5*) or sub-section (*6*), the company shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to twenty-five lakh rupees

and every officer of such company who is in default shall be punishable with imprisonment for a term which may extend to three years or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees, or with both.

(*8*) The Central Government may give such general or special directions to a company or class of companies as it considers necessary to ensure compliance of provisions of this section and such company or class of companies shall comply with such directions.".

Amendment of section 137.

22. In section 137 of the principal Act, in sub-section (*3*),—

(*a*) for the words "punishable with fine", the words "liable to a penalty" shall be substituted;

(*b*) for the portion beginning with the words "punishable with imprisonment", and ending with the words "five lakh rupees or with both", the words "shall be liable to a penalty of one lakh rupees and in case of continuing failure, with a further penalty of one hundred rupees for each day after the first during which such failure continues, subject to a maximum of five lakh rupees" shall be substituted.

Amendment of section 140.

23. In section 140 of the principal Act, for sub-section (*3*), the following sub-section shall be substituted, namely:—

"(*3*) If the auditor does not comply with the provisions of sub-section (*2*), he or it shall be liable to a penalty of fifty thousand rupees or an amount equal to the remuneration of the auditor, whichever is less, and in case of continuing failure, with a further penalty of five hundred rupees for each day after the first during which such failure continues, subject to a maximum of five lakh rupees.".

Amendment of section 157.

24. In section 157 of the principal Act, for sub-section (*2*), the following sub-section shall be substituted, namely:—

"(*2*) If any company fails to furnish the Director Identification Number under sub-section (*1*), such company shall be liable to a penalty of twenty-five thousand rupees and in case of continuing failure, with a further penalty of one hundred rupees for each day after the first during which such failure continues, subject to a maximum of one lakh rupees, and every officer of the company who is in default shall be liable to a penalty of not less than twenty-five thousand rupees and in case of continuing failure, with a further penalty of one hundred rupees for each day after the first during which such failure continues, subject to a maximum of one lakh rupees.".

Substitution of new section for section 159.

25. For section 159 of the principal Act, the following section shall be substituted, namely:—

Penalty for default of certain provisions.

"159. If any individual or director of a company makes any default in complying with any of the provisions of section 152, section 155 and section 156, such individual or director of the company shall be liable to a penalty which may extend to fifty thousand rupees and where the default is a continuing one, with a further penalty which may extend to five hundred rupees for each day after the first during which such default continues.".

Amendment of section 164.

26. In section 164 of the principal Act, in sub-section (*1*), after clause (*h*), the following clause shall be inserted, namely:—

"(*i*) he has not complied with the provisions of sub-section (*1*) of section 165.".

Amendment of section 165.

27. In section 165 of the principal Act, in sub-section (*6*), for the portion beginning with the words "punishable with fine" and ending with the words "contravention continues", the words "liable to a penalty of five thousand rupees for each day after the first during which such contravention continues" shall be substituted.

Amendment of section 191.

28. In section 191 of the principal Act, for sub-section (*5*), the following sub-section shall be substituted, namely:—

"(*5*) If a director of the company makes any default in complying with the provisions of this section, such director shall be liable to a penalty of one lakh rupees.".

Amendment of section 197.

29. In section 197 of the principal Act,—

(*a*) sub-section (*7*) shall be omitted;

(*b*) for sub-section (*15*), the following sub-section shall be substituted, namely:—

"(*15*) If any person makes any default in complying with the provisions of this section, he shall be liable to a penalty of one lakh rupees and where any default has been made by a company, the company shall be liable to a penalty of five lakh rupees.".

Amendment of section 203.

30. In section 203 of the principal Act, for sub-section (*5*), the following sub-section shall be substituted, namely:—

"(*5*) If any company makes any default in complying with the provisions of this section, such company shall be liable to a penalty of five lakh rupees and every director and key managerial personnel of the company who is in default shall be liable to a penalty of fifty thousand rupees and where the default is a continuing one, with a further penalty of one thousand rupees for each day after the first during which such default continues but not exceeding five lakh rupees.".

Amendment of section 212.

31. In section 212 of the principal Act,—

(*a*) in sub-section (*8*), for the words "If the Director, Additional Director or Assistant Director", the words "If any officer not below the rank of Assistant Director" shall be substituted;

(*b*) in sub-section (*9*), for the portion beginning with the words "The Director" and ending with the word, brackets and figure "sub-section (*8*)", the words, brackets and figure "The officer authorised under sub-section (*8*) shall, immediately after arrest of such person under such sub-section" shall be substituted;

(*c*) in sub-section (*10*),—

(*i*) for the words "Judicial Magistrate", the words "Special Court or Judicial Magistrate" shall be substituted;

(*ii*) in the proviso, for the words "Magistrate's court", the words "Special Court or Magistrate's court" shall be substituted;

(*d*) after sub-section (*14*), the following sub-section shall be inserted, namely:—

"(*14A*) Where the report under sub-section (*11*) or sub-section (*12*) states that fraud has taken place in a company and due to such fraud any director, key managerial personnel, other officer of the company or any other person or entity, has taken undue advantage or benefit, whether in the form of any asset, property or cash or in any other manner, the Central Government may file an application before the Tribunal for appropriate orders with regard to disgorgement of such asset, property or cash and also for holding such director, key managerial personnel, other officer or any other person liable personally without any limitation of liability.".

Amendment of section 238.

32. In section 238 of the principal Act, in sub-section (*3*), for the words "punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees", the words "liable to a penalty of one lakh rupees" shall be substituted.

Amendment of section 241.

33. In section 241 of the principal Act,—

(*a*) in sub-section (*2*), the following proviso shall be inserted, namely:—

"Provided that the applications under this sub-section, in respect of such company or class of companies, as may be prescribed, shall be made before the Principal Bench of the Tribunal which shall be dealt with by such Bench.";

(*b*) after sub-section (*2*), the following sub-sections shall be inserted, namely:—

"(*3*) Where in the opinion of the Central Government there exist circumstances suggesting that—

(*a*) any person concerned in the conduct and management of the affairs of a company is or has been in connection therewith guilty of fraud, misfeasance, persistent negligence or default in carrying out his obligations and functions under the law or of breach of trust;

(*b*) the business of a company is not or has not been conducted and managed by such person in accordance with sound business principles or prudent commercial practices;

(*c*) a company is or has been conducted and managed by such person in a manner which is likely to cause, or has caused, serious injury or damage to the interest of the trade, industry or business to which such company pertains; or

(*d*) the business of a company is or has been conducted and managed by such person with intent to defraud its creditors, members or any other person or otherwise for a fraudulent or unlawful purpose or in a manner prejudicial to public interest,

the Central Government may initiate a case against such person and refer the same to the Tribunal with a request that the Tribunal may inquire into the case and record a decision as to whether or not such person is a fit and proper person to hold the office of director or any other office connected with the conduct and management of any company.

(*4*) The person against whom a case is referred to the Tribunal under sub-section (*3*), shall be joined as a respondent to the application.

(*5*) Every application under sub-section (*3*)—

(*a*) shall contain a concise statement of such circumstances and materials as the Central Government may consider necessary for the purposes of the inquiry; and

(*b*) shall be signed and verified in the manner laid down in the Code of Civil Procedure, 1908, for the signature and verification of a plaint in a suit by the Central Government.".

5 of 1908.

Amendment of section 242.

34. In section 242 of the principal Act, after sub-section (*4*), the following sub-section shall be inserted, namely:—

"(*4A*) At the conclusion of the hearing of the case in respect of sub-section (*3*) of section 241, the Tribunal shall record its decision stating therein specifically as to whether or not the respondent is a fit and proper person to hold the office of director or any other office connected with the conduct and management of any company.".

Amendment of section 243.

35. In section 243 of the principal Act,—

(*a*) after sub-section (*1*), the following sub-sections shall be inserted, namely:—

"(*1A*) The person who is not a fit and proper person pursuant to sub-section (*4A*) of section 242 shall not hold the office of a director or any other office connected with the conduct and management of the affairs of any company for a period of five years from the date of the said decision:

Provided that the Central Government may, with the leave of the Tribunal, permit such person to hold any such office before the expiry of the said period of five years.

(*1B*) Notwithstanding anything contained in any other provision of this Act, or any other law for the time being in force, or any contract, memorandum or articles, on the removal of a person from the office of a director or any other office connected with the conduct and management of the affairs of the company, that person shall not be entitled to, or be paid, any compensation for the loss or termination of office.";

(*b*) in sub-section (*2*), after the word, brackets and figure "sub-section (*1*)", the words, brackets, figure and letter "or sub-section (*1A*)" shall be inserted.

Amendment of section 248.

36. In section 248 of the principal Act, in sub-section (*1*),—

(*a*) in clause (*c*), for the word and figures "section 455,", the words and figures "section 455; or" shall be substituted;

(*b*) after clause (*c*) and before the long line, the following clauses shall be inserted, namely:—

"(*d*) the subscribers to the memorandum have not paid the subscription which they had undertaken to pay at the time of incorporation of a company and a declaration to this effect has not been filed within one hundred and eighty days of its incorporation under sub-section (*1*) of section 10A; or

(*e*) the company is not carrying on any business or operations, as revealed after the physical verification carried out under sub-section (*9*) of section 12.".

Amendment of section 272.

37. In section 272 of the principal Act, in sub-section (*3*), for the words, brackets and letter "or clause (*e*) of that sub-section", the words "of that section" shall be substituted.

Amendment of section 398.

38. In section 398 of the principal Act, in sub-section (*1*), in clause (*f*), the word "prospectus," shall be omitted.

Amendment of section 441.

39. In section 441 of the principal Act,—

(*a*) in sub-section (*1*), in clause (*b*), for the words "does not exceed five lakh rupees", the words "does not exceed twenty-five lakh rupees" shall be substituted;

(*b*) for sub-section (*6*), the following sub-section shall be substituted, namely:—

"(*6*) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, any offence which is punishable under this Act with imprisonment only or with imprisonment and also with fine shall not be compoundable.". 2 of 1974.

Amendment of section 446B.

40. In section 446B of the principal Act, for the portion beginning with the words "punishable with fine" and ending with the words "specified in such sections", the words "liable to a penalty which shall not be more than one-half of the penalty specified in such sections" shall be substituted.

Amendment of section 447.

41. In section 447 of the principal Act, in the second proviso, for the words "twenty lakh rupees", the words "fifty lakh rupees" shall be substituted.

Amendment of section 454.

42. In section 454 of the principal Act,—

(*i*) for sub-section (*3*), the following sub-section shall be substituted, namely:—

"(*3*) The adjudicating officer may, by an order—

(*a*) impose the penalty on the company, the officer who is in default, or any other person, as the case may be, stating therein any non-compliance or default under the relevant provisions of this Act; and

(*b*) direct such company, or officer who is in default, or any other person, as the case may be, to rectify the default, wherever he considers fit.";

(*ii*) in sub-section (*4*), for the words "such company and the officer who is in default", the words "such company, the officer who is in default or any other person" shall be substituted;

(*iii*) in sub-section (*8*),—

(*a*) in clause (*i*), for the words "does not pay the penalty imposed by the adjudicating officer or the Regional Director", the words, brackets and figures "fails to comply with the order made under sub-section (*3*) or sub-section (*7*), as the case may be," shall be substituted;

(*b*) in clause (*ii*),—

(*i*) for the words "Where an officer of a company", the words "Where an officer of a company or any other person" shall be substituted;

(*ii*) for the words "does not pay the penalty", the words, brackets and figures "fails to comply with the order made under sub-section (*3*) or sub-section (*7*), as the case may be," shall be substituted.

Insertion of new section 454A.

43. After section 454 of the principal Act, the following section shall be inserted, namely:—

Penalty for repeated default.

"454A. Where a company or an officer of a company or any other person having already been subjected to penalty for default under any provisions of this Act, again commits such default within a period of three years from the date of order imposing such penalty passed by the adjudicating officer or the Regional Director, as the case may be, it or he shall be liable for the second or subsequent defaults for an amount equal to twice the amount of penalty provided for such default under the relevant provisions of this Act.".

Ord. 6 of 2019.

Repeal and savings.

44. (*1*) The Companies (Amendment) Second Ordinance, 2019 is hereby repealed.

(*2*) Notwithstanding such repeal, anything done or any action taken under the said Ordinance shall be deemed to have been done or taken under this Act.